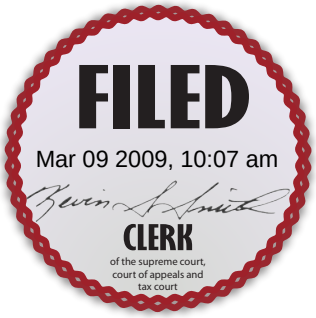

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IN THE
COURT OF APPEALS OF INDIANA

KARLA L. LINDSAY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 34A04-0810-CV-594
	)	
TERRY S. LINDSAY,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable George A. Hopkins, Judge
Cause No. 34D04-0710-DR-1101

March 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Karla Lindsay ("Mother") appeals the trial court's modification of child support. We reverse and remand for the court to enter a new child support order in accordance with this opinion.

FACTS AND PROCEDURAL HISTORY

Mother's marriage to Terry Lindsay ("Father") produced two children, K. and R. After the divorce, the parties shared legal custody of both children, but Father had physical custody of K., while Mother had physical custody of R. Thereafter, K. moved into Mother's house and R. began spending more time at Father's house. Accordingly, Mother and Father filed for modification of custody and child support.

The court gave Mother legal and physical custody of K. The court's child support obligation worksheet for K. indicates Father's Line 6 child support obligation is $198.67, while Mother's obligation is $54.12. After Father received credit for weekly health insurance premiums and parenting time credit, his Line 8 recommended support obligation was reduced to $152.69.

As to R., the court gave Mother and Father joint legal custody and ordered they "share the physical custody of [R.] equally" by having him stay with each parent during alternating weeks. (Appellant's App. at 16.) The court also found "[g]iven the nature of the custody arrangements deviation from the Guidelines as to [R.] is justified." (*Id.* at 17.) The court's child support obligation for R. contains the same Line 6 findings: Father's obligation is $198.67, while Mother's obligation is $54.12. The court selected Father as the nominal custodial parent, such that his Line 8 obligation is "N/A." (*Id.* at

20.) Mother, as the non-custodial parent, received a parenting time credit of $132.73. Because that credit is larger than her obligation of $54.12, Mother's Line 8 obligation is "-78.61." (*Id.*)

The court's order then combines these results for the two children − Father's obligation for K. is $152.69 and Mother's obligation for R. is negative $78.61 − by ordering "[F]ather shall pay the mother child support in the amount of $74.00 per week." (*Id.* at 17.)

Mother filed a motion to correct error in which she asserted:

> 4. The error in the calculation of support appears to have resulted from the subtraction of $78.61 from $152.69 instead of a subtraction of the negative value (-78.61).
> 5. The proper calculation is: $152.69 - (-$78.61) = 231.30.
> 6. Accordingly, Paragraph 9 of the August 7, 2008 Ruling should be corrected to show Petitioner/Father paying support to the Respondent/Mother in the amount of $231.30 per week.

(*Id.* at 37) The court denied Mother's motion without entering findings or conclusions.

DISCUSSION AND DECISION

We review the denial of a motion to correct error for an abuse of discretion. *Scales v. Scales*, 891 N.E.2d 1116, 1118 (Ind. Ct. App. 2008). The court abuses its discretion if its decision is against the logic and effect of the facts and circumstances before the court or if the court misinterpreted the law. *Id.*

"A trial court's calculation of child support is presumptively valid," *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008), and we may not reverse unless the decision is "clearly erroneous or contrary to law." *Id.* Decisions are clearly erroneous when they are

"clearly against the logic and effect of the facts and circumstances that were before the trial court." *Id.* Where, as here, the trial court entered formal findings, we must first determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.*

In *Grant v. Hager*, 868 N.E.2d 801 (Ind. 2007), our Indiana Supreme Court addressed whether a trial court could order a custodial parent to pay support when a parenting time credit results in a negative child support obligation for a non-custodial parent:

> The Court of Appeals concluded that the Guidelines do not permit the application of the Parenting Time Credit in a manner that requires a custodial parent to pay child support to a non-custodial parent. Specifically, the Court of Appeals examined the Guidelines and their accompanying commentary and found that they supported this interpretation, including the repeated references to the payment of child support running from the non-custodial parent to the custodial parent; the fact that there are no references in the Guidelines or commentary involving support payments from the custodial parent to the non-custodial parent; and the crediting language of Guideline 3(G)(4) (The "court may grant the noncustodial parent a credit toward his or her weekly child support obligation . . . based upon the calculation from a Parenting Time Credit Worksheet . . . ."). The Court of Appeals was correct in its interpretation of the Guidelines in this regard.
>
> We also agree with the following observation made by the Court of Appeals as to the policies implicated by this question:
>
> > There are advantages and disadvantages to allowing child support payments to run from a custodial to a noncustodial parent. On the one hand, to do so encourages a noncustodial parent to participate more in his or her children's lives following divorce, and it results in more similar living environments for children when they go from one parent's home to the other's. On the other hand, it also has the potential to increase custody disputes by providing an incentive for a custodial parent to fight shared parenting time,

> and it takes money from the custodial parent, thereby reducing the likelihood that he or she will be able to provide a home more similar to that which the children would have enjoyed had the marriage remained intact. Where a matter is scheduled for regular review, however, these and other concerns are best addressed by the judicial committees charged with that review rather than by this Court.

Although we agree with the Court of Appeals that the Guidelines do not authorize "the payment of child support from a custodial to a noncustodial parent," that does not automatically render the trial court's resolution of this matter invalid. Ind. Child Support Rule 2 provides that:

> In any proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded.

As such, there is a rebuttable presumption that neither party owes the other support under their respective current incomes and their shared parenting time arrangement. However, Child. Supp. R. 3 provides:

> If the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion.

Given this deviation authority, a court could order a custodial parent to pay child support to a non-custodial parent based on their respective incomes and parenting time arrangements if the court had concluded that it would be unjust not to do so and the court had made the written finding mandated by Child. Supp. R. 3. The dissolution court's conclusion here may very well be supportable on this basis but the court did not make the required findings here, apparently believing instead that the Guidelines themselves authorized it to order Grant to pay child support to Hager. We remand this matter to the dissolution court for reconsideration in accordance with the principles enunciated in this decision.

Id. at 803-04 (citations omitted).

In summary, the Court held the trial court has two options when a parenting time

credit results in a negative support obligation for the non-custodial parent. First, the court could order neither parent to pay support, because "there is a rebuttable presumption that neither party owes the other support." *Id.* at 803. Second, if the trial court enters the required findings under Child Support Rule 3 to demonstrate "it would be unjust not to do so," the court "could order a custodial parent to pay child support to a non-custodial parent." *Id.* at 804.

Here, the trial court found Father's obligation for K. is $152.69 and Mother's obligation for R. is negative $78.61. When combining those values to arrive at a final support obligation for Father, the court subtracted Mother's negative obligation from Father's positive obligation, decreasing Father's total support obligation to $74. This was error, as the court changed Mother's negative support obligation for R. into a positive obligation.[1]

Rather, pursuant to *Grant*, the trial court had two options. On finding Mother's support obligation for R. was negative due to her parenting time credit, the court could follow the rebuttable presumption that neither parent owed the other support for R.; thus the court would enter a support order requiring Father to pay Mother $152.69 per week in support for K. *See id.* at 803. In the alternative, the court could enter findings sufficient under Child Support Rule 3 to justify ordering Father to pay Mother $78.61 per week in

[1] We acknowledge the trial court found "[g]iven the nature of the custody arrangements deviation from the Guidelines as to [R.] is justified." (Appellant's App. at 17.) Nevertheless, we find that explanation insufficient to justify modifying Mother's $78 credit into a $78 debit, especially when such modification was not an option provided by *Grant.*

support for R.; when added to Father's obligation for K., Father's total obligation would be $231.30. *See id.* at 804. Because the court did not do either of those, we reverse and remand for the court to enter a new child support order in accordance with the principles enunciated in this opinion.

Reversed and remanded

BRADFORD, J., and FRIEDLANDER, J., concur.